

## CHAPTER 3 FAIR INFORMATION PRACTICES

(Update effective November 3, 2004)

(Amended subrule 3.13(2) by adding a new paragraph “i” and amended subrule 3.14(3))

The racing and gaming commission adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to fair information practices which are printed in the first volume of the Iowa Administrative Code.

**491-3.1(17A,22) Definitions.** As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "racing and gaming commission".

**491-3.3(17A,22) Requests for access to records.**

**3.3(1) Location of record.** In lieu of the words "(insert agency head)", insert "Administrator". In lieu of the words "(insert agency name and address)", insert "Racing and Gaming Commission, 717 East Court, Des Moines, Iowa 50309".

**3.3(2) Office hours.** In lieu of the words "(insert customary office hours, and if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. Monday through Friday except legal holidays".

**3.3(7) Fees.**

c. *Supervisory fee.* In lieu of the words “(specify time period)”, insert “30 minutes”.

**491-3.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.** In lieu of the words "(designate office)", insert "racing and gaming commission".

**491-3.9(17A,22) Disclosures without the consent of the subject.**

**3.9(1)** Open records are routinely disclosed without the consent of the subject.

**3.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a. For a routine use as defined in rule 3.10 or in the notice for a particular record system.
- b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.
- e. To the legislative fiscal bureau under Iowa Code section 2.52.

- f. Disclosures in the course of employee disciplinary proceedings.
- g. In response to a court order or subpoena.

**491-3.10(17A,22) Routine use.** "*Routine use*" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

**3.10(1)** To the extent allowed by law, the following uses are considered routine uses of all agency records:

- a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer, employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.
- b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- d. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.
- e. Any disclosure specifically authorized by the statute under which the record was collected or maintained.
- f. Information transferred to any originating agency when racing and gaming commission has completed the authorized audit, investigation, or inspection.

**3.10(2)** Reserved.

**491-3.11(17A,22) Consensual disclosure of confidential records.**

**3.11(1)** *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 3.7(17A,22).

**3.11(2)** *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**3.11(3)** *Sharing information.* Notwithstanding any statutory confidentiality provision, the agency may share information with the child support recovery unit and the college student aid commission through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code Supplement chapter 252J, 261 or 598.

**491-3.12(17A,22) Release to subject.**

**3.12(1)** A written request to review confidential records may be filed by the subject of the record as provided in rule 3.6(17A,22). The commission need not release the following records to the subject:

- a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held

confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or otherwise privileged.

c. Investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5)).

d. As otherwise authorized by law.

**3.12(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the commission may take reasonable steps to protect confidential information relating to another subject.

#### **491-3.13(17A,22) Availability of records.**

**3.13(1)** Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**3.13(2)** Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

c. Exempt records under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)"d."

f. Those portions of commission staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by commission staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

(See Iowa Code sections 17A.2 and 17A.3)

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122.11, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Criminal investigative reports. (Iowa Code section 22.7(5))

i. Information gathered during an investigation during pendency of the investigation. (Iowa Code sections 99D.7(8) and 99F.4(6)).

j. Personnel files. Information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

k. Security plans, surveillance system plans, and internal controls of the licensees that are made available to the commission that would enable law violators to avoid detection and give a clearly

improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2, 17A.3 and 22.7(18).)

**491-3.14(17A,22) Personally identifiable information.** The commission maintains systems of records which contain personally identifiable information.

**3.14(1) *Board of stewards' or gaming board hearings and contested case records.*** Records are maintained in paper and computer files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the board of stewards or gaming board hearing or contested case records as well as summary lists of enforcement activities.

Records are collected by authority of Iowa Code chapters 99D and 99F. None of the information stored in a data processing system is compared with information in any other data processing system.

**3.14(2) *Occupational licensing.*** Records associated with occupational licensing conducted under Iowa Code chapters 99D and 99F are maintained by this commission. The licensing system of records includes numerous files and cross files which include but are not limited to: computer storage of licensing records and photos, fingerprint cards, and license applications. The records associated with occupational licenses, which contain personally identifiable information, are open for public inspection only upon the approval of the administrator or the administrator's designee. The information stored in a data processing system is not compared with information in any other data processing system.

**3.14(3) *List of contested cases and stewards' hearings.*** The commission may utilize a listing of contested case and stewards' hearings furnished by a national organization and provide individually identifiable information to that organization. The list is used for purposes delineated in Iowa Code chapter 99D.

These rules are intended to implement Iowa Code section 22.11 and chapters 99D and 17A.